



# IMPLEMENTATION AND IMPACT OF SARFAESI ACT 2002

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## ABSTRACT

Banks are the foundation of any nation as they are inescapable for the monetary advancement of a nation. Investors are the absolute entirety of any business. Banks are delegates between the investors and borrowers. This connection separates when the borrower neglect to reimburse the vital and premium sum; subsequently the banking segment concentrate on the issue of Non-Performing Assets. So far as India is worried, before 2002 banks have no alternative other than implementing the security through a court/tribunal, to recoup its duty. On the suggestion of Narasimham Committee –II SARFAESI Act 2002 came as a sigh of relief for the banking sector. This demonstration enabled the banks and budgetary organizations for the procurement of the secured resources of the borrowers held with the bankers at the time of availing loans. This paper endeavors to concentrate the execution and effect of SARFAESI Act 2002 for the administration of NPA in Indian Banking.

**KEYWORDS:** Economic Development, Inevitable, Narasimham Committee-II, SARFAESI ACT 2002, Secured Assets.

## INTRODUCTION

Banks are ineluctable and vital for the financial advancement of a nation. Banks act as intermediary amongst investors and borrowers. Accepting of deposits from the contributors and loaning of credits to the borrowers are the essential functions of banks. They provide interest for deposits and gather interest for advances. In this way banks act as a critical connection amongst investors and borrowers. This tie separates when the borrowers neglect to reimburse the principal and the intrigral sum as concurred. This outcomes in Non-Performing Assets for the banking industry. At the point when the cash is held up in non-performing resources the liquidity of the loaning broker is tied up bringing about crippling of credit improvement and financial exercises. The banks are demanding for securities while availing loans from the borrowers so that they can sell the securities and recoup the sum. The bank confronts a significant measure of issues in this methodology generally relating to the basic laws of the nation which are excessively awkward. It might take years to get an announcement. In India, before 2002, banks have no choice to recoup its duty by upholding the security through a court/tribunal.

Keeping in mind the end goal to make the framework simpler for the recuperation of credits or NPAs from the defaulters, Narasimham Committee mandated identification and reduction of NPAs to be treated as a national priority because NPA direct toward credit risk that bank faces and its efficiency in allocating resources. For this they suggested the arrangement of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2002, where the NPAs could be recouped from the defaulter without intercession of court by having the advantages of borrowers in India.

## REVIEW OF LITERATURE

**Gurumoorthy and Sufha (2012)** analyzes the classification of loan assets in PSBs, composition of NPAs in different sectors and NPAs position in PSBs. In this study, it is observed that PSBs exercised stringent control measures to reduce the level of NPAs. The author concludes that Non-Performing Assets may not turn banks into Non-performing banks; instead steps should be taken to convert Non-Performing Assets into Now –Performing Assets. As far as old NPAs are concerned, a bank can remove it on its own or sell the assets to Asset Management Companies to clean up its balance sheet.

**Chanchal (2013)-** highlights the assessment of different systems utilized by the general population division banks for the administration of non-performing resources (NPAs). The review likewise dissected the effect of securitization enactment in the administration of NPAs in the banking industries. To achieve this objective after managing account organizations working at their nearby, territorial and zonal levels have been drawn nearer to give the imperative information and data. The review uncovers that the NPAs have not just influenced the benefit of the banks and budgetary organizations, additionally put a chaos on the picture of Indian saving money and a deplete on the very esteem arrangement of the general public.

**Samir and Kamra (2013)** analysed the position of NPAs in some banks to be specific State Bank of India (SBI), Punjab National Bank (PNB) and Central Bank of India (CBI). It additionally highlights the arrangements sought after by the banks to handle the NPAs and proposes a multi-pronged system for expedient recuperation of NPAs in saving money segment. The review traverses the period begin-

ning from FY 1996-1997 to FY 2009-2010. The creators dissected the patterns in NPAs regarding Values, gross and net NPAs as a rate of gross advances and net advances, gross and net NPAs as a rate of Total Assets individually. The paper insights about the segment astute order of NPAs, purposes behind their event, the impacts of NPAs on banks and recurrence conveyance of open division banks by proportion of net NPAs to net advances.

**Chanderaappa, P. (June 2014)** suggested that to improve the efficiency and profitability of banks the NPA need to be reduced and controlled. NPAs have been fighting cyclical movement or dieses on week patient and it is an underdevelopment feature like chronic poverty. It reflects the performance of banks. Reduced NPAs generally gives the impression that banks have strengthened their appraisal processes over the years and growth in NPAs involves the necessity of provisions, which bring down the overall profitability of banks.

**Rao, M. and Patel, A. (March 2015)** considered the aggregate data of public sector, private sector and foreign banks and attempts to compare analyze and interpret the NPA management from the year 2009- 2013. The findings reveals that the percentage of Gross NPA to Gross advances is increasing for public banks, ratio of Loss Advances to Gross Advances are higher in foreign banks, the Estimated Gross NPA for 2014 is also more in public banks as compared to private and foreign banks and from the ANNOVA test, it is concluded ratio of Gross NPA to Gross Advances for public sector, private sector and foreign banks does not have significant difference between 2009-13.

**Shaardha and Jain (2016)** analyse the position of NPAs in 5 noteworthy banks of SBI, CBI, BOB, CB, and PNB. It likewise highlights the expansion in the proportion of NPA influencing the benefit of the banks. The review traverses the period beginning from 2008 to 2014. The Gross NPAs level of the general population division banks in the year 2012 was 2.94% and expanded in 2013 to 3.42 % and in the year 2014 it has additionally expanded to 4.4%. The paper insights about the quantity of cases alluded to Lok Adalat, DRT and SARFAESI Act.

After considering the viewpoints of different scholars it has been observed that NPAs pose a serious danger to the banking industry. It deserves utmost attention, since bad loans ultimately affect the economy of the country. The Private Sector Banks have outperformed both Public Sector Banks and Foreign Banks in this key parameter of the Banking business for the period under reference i.e. from 2005-06 to 2015-16.

## OBJECTIVE OF THE STUDY

In the light of above discussion the main objectives of the paper is :-

- To study the causes of NPA in banking industry.
- To study the impact and implementation of SARFAESI Act 2002.
- To study the effectiveness of SARFAESI Act.
- To study the latest amendments with respect to the Act studied in this paper.

## RESEARCH METHODOLOGY

The method of study adopted in this paper follows a mixed approach of qualitative analysis as well as quantitative analysis of the data collected from annual report of Reserve Bank of India Publication “Trend and progress of banking in

India. The articles and papers published in different business journals, magazines, newspapers, periodicals were studied and data available on NPAs recovery have been used for analysis. Statistical tools like percentages used for analysis.

#### FACTORS RESPONSIBLE FOR NPAs

The following factors confronting the borrowers are responsible for incidence of NPAs in the banks:-

- (i) Diversion of funds for expansion/modernization/setting up new projects/helping promoting sister concerns.
- (ii) Time/cost overrun while implementing projects.
- (iii) External factors like raw-material shortage, raw-material/input price escalation, power shortage, industrial recession, excess capacity, natural calamities like floods, accident etc.
- (iv) Business failure like product failing to capture market, inefficient management, strike/stained labour relations, wrong technology, technical problem, product obsolescence etc.
- (v) Failure, non-payment/over dues in other countries, recession in other countries, externalisation problems, adverse exchange rate etc.
- (vi) Wilful default, siphoning of funds, fraud, misappropriation, promoters/management disputes etc.
- (vii) Government policies like excise, import duty changes, deregulation, pollution control orders etc.

Besides above, factors such as deficiencies on the part of the banks viz. deficiencies in credit appraisal, monitoring and follow-up; delay in release of limits; delay in settlement of payments/subsidies by Government bodies etc. are also attributed for the incidence of NPAs.

RBI has taken many measures to lessen the level of NPAs in managing an account part by actualizing the methods. The way toward borrowing additionally gets ostentations because of increment in NPAs level. The main thing which will support the borrowing and enhance the benefit of banks is legitimate recuperation of advances. To enhance the determination or recuperation of bank advances, IBC (Insolvency and Bankruptcy Code) has been ordered and revised the SARFAESI (Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest) Act and RDDBFI (Recovery of Debts because of Banks and Financial Institutions). Further, six new Debt Recovery Tribunals (DRTs) have been built up for enhancing recuperation.

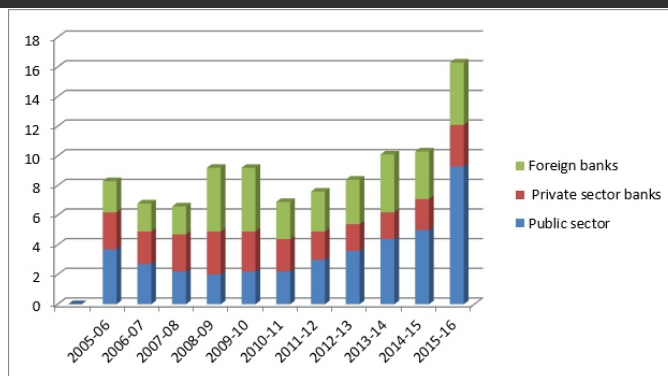
#### Trends of NPAs In Public Sector, Private Sector and Foreign Banks

(Amt. in Rs. Billion)

| % of Gross NPAs to Total Advances |                     |                      |               |                                |
|-----------------------------------|---------------------|----------------------|---------------|--------------------------------|
| Year                              | Public sector Banks | Private sector banks | Foreign banks | All Scheduled Commercial banks |
| 2006-07                           | 2.7                 | 2.2                  | 1.9           | 2.5                            |
| 2007-08                           | 2.2                 | 2.5                  | 1.9           | 2.3                            |
| 2008-09                           | 2.0                 | 2.9                  | 4.3           | 2.3                            |
| 2009-10                           | 2.2                 | 2.7                  | 4.3           | 2.4                            |
| 2010-11                           | 2.2                 | 2.2                  | 2.5           | 2.3                            |
| 2011-12                           | 3.0                 | 1.9                  | 2.7           | 2.8                            |
| 2012-13                           | 3.6                 | 1.8                  | 3.0           | 3.2                            |
| 2013-14                           | 4.4                 | 1.8                  | 3.9           | 3.8                            |
| 2014-15                           | 5.0                 | 2.1                  | 3.2           | 4.3                            |
| 2015-16                           | 9.3                 | 2.8                  | 4.2           | 7.5                            |

Source: www.dbie.rbi.in

It has been obviously shown from the table that percentage of gross NPAs of Public sector banks has quickly on expanding pattern in contrast with private sector banks and foreign banks. The private sector banks especially have the NPAs, but not exactly to the foreign banks which focus to their proficiency of NPA administration. In any case, scheduled commercial banks show a rising pattern, demonstrating a deliberate exertion by these banks to decrease the NPA.



#### Measures to Solve Problems of NPA

The issues of NPA have been getting more prominent consideration since 1991 in India. The Narasimham Committee prescribed various strides to diminish NPA. The Different sorts of recuperation process for NPAs are One Time Settlement Schemes, Lok Adalat, Debt Recovery Tribunal (DRTs), SARFAESI Act 2002, Assets Reconstruction Companies (ARC), Corporate Debt Restructuring (CDR), Credit Information Bureau. Among the above different approaches to recoup measures, the best routes rehearsed for recuperating NPAs from defaulters, are talked about underneath:-

#### Debt Recovery Tribunals (DRTs)

Narasimham Committee Report I (1991) prescribed the setting up of Special Tribunals to decrease the time required for settling cases. Tolerating the proposals, Debt Recovery Tribunals (DRTs) were set up. There are 22 DRTs and 5 Debt Recovery Appellate Tribunals. This is deficient to take care of the issue everywhere throughout the nation (India).

#### Lok Adalats

Lok Adalats have been discovered appropriate for the recuperation of little credits. As per the rules issued by Reserve Bank of India in 2001 they cover NPA up to Rs. 5 lakhs, both suit recorded and non-suit documented are secured. Lok Adalats keep away from the legitimate procedure.

#### Compromise Settlement

Trade off Settlement Scheme gives a basic component to recuperation of NPA. Bargain Settlement Scheme is connected to propels underneath Rs. 10 Crores. It covers suit recorded cases and cases pending with courts and DRTs (Debt Recovery Tribunals). Instances of Willful default and misrepresentation were rejected.

#### Credit Information Bureau

A decent data framework is required to keep advances from transforming into a NPA. On the off chance that a borrower is a defaulter to one bank, this data ought to be accessible to all banks with the goal that they may abstain from loaning to him. A Credit Information Bureau can help by keeping up an information bank which can be surveyed by all loaning organizations.

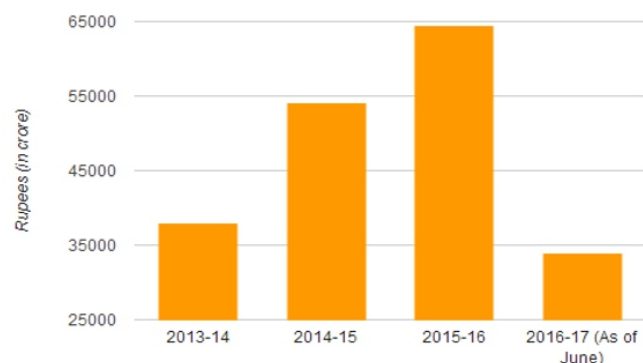
#### SARFAESI ACT 2002

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) enables Banks/Financial Institutions to recoup their non-performing resources without the intercession of the Court. Banks use this as a compelling instrument for terrible credits (NPA) recuperation. It is conceivable where non-performing resources are sponsored by securities charged to the Bank by method for hypothecation or home loan or task.

The Securitisation Act additionally enables the banks to assume control over the ownership of the advantages and administration of the organization. The money-lenders can recoup the duty by offering the advantages or changing the administration of the firm. The Act likewise empowers the foundation of Asset Reconstruction Companies for acquiring NPA. According to the provisions of the Act, Asset Reconstruction Company of India Ltd. with eight shareholders and an initial capital of Rs. 10 crores has been set up. The eight shareholders are HDFC, HDFC Bank, IDBI, IDBI Bank, SBI, ICICI, Federal Bank and South Indian Bank.

The implementation of SARFAESI Act 2002 has helped to manage the NPAs at lower level by allowing the lenders to recover the loan from the defaulters without the intervention of court. The SARFAESI Act allows banks and other financial institutions to auction residential and commercial properties when borrowers default on their payments. This helps the banks to reduce their NPA by recovery and reconstruction. Under this Act, 64,519 properties were seized or taken possession off by the banks in 2015-16. In the financial year 2016-17 as of June, the number stands at 33,928.

### Number of Property Seized/Possessed under SARFAESI Act



#### The Act empowers the Bank:

- To issue request notice to the defaulting borrower and underwriter, calling upon them to release their contribution in full inside 60 days from the date of the notice.
- To pull out to any individual who has procured any of the secured resources from the borrower to surrender the same to the Bank.
- To solicit any account holder from the borrower to pay any total due or getting to be plainly because of the borrower.
- Any Security Interest made over Agricultural Land can't be continued with.

#### Techniques for Recovery of NPA's under the SARFAESI Act

The Act gives three option techniques to recuperation of NPA's in particular Securitization Asset Reconstruction and Enforcement of security without court mediation. They are as per the following:-

**Securitization:-** It suggests the issue of security receipt by raising of assets by SCs/ARCs. A securitization organization reproduction organization may raise stores from just the QIB (Qualified Institutional purchasers) by framing plans for procuring money related resources. These organizations keep up particular records for each obtained monetary resource. Acknowledge of such resources are held and connected towards the recovery of ventures and installments of guaranteed returns.

**Resource Reconstruction:-** The SCs/ARCs purchase the NPAs from banks and take the accompanying measures to recuperate awful advances sum from the borrowers:-

- Proper administration of the borrower business.
- Changing the administration of the borrower business.
- Takeover the administration of the matter of the borrower
- Sale or rent.
- Restructuring the matter of the borrower.
- Rescheduling of the reimbursements of obligations payable by the borrower.
- Enforcing the security intrigue.
- Taking the ownership of secured resources.
- The sum recuperated by ARCs will be utilized to remake the organization's administration

#### Exception from Registration of Security Receipt:-

The Act gives not withstanding anything contained in the Registration Act, 1908 for implementation of security without court intercession.

- Any security receipt issued by SCs/ARCs under the segment 7 of the Act and not making, pronouncing, doling out any right, title or enthusiasm to or in resolute property aside from in so far as it entitles the holder of the security receipt to a unified intrigue.
- Any exchange of security receipts, should not require necessary enrollment.

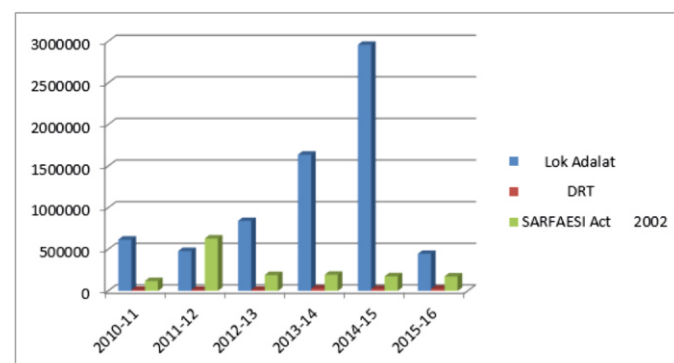
The technique for study embraced in this paper takes after a blended approach of subjective investigation and in addition quantitative examination of the information gathered from yearly report of Reserve Bank of India Publication "Pattern

and advance of managing an account in India", Statistical tables identified with banks in India. The articles and papers distributed in various business diaries, magazines, daily paper, periodicals were considered and information accessible on NPAs recovery has been utilized for investigation.

#### Number of Cases of NPAs referred

| Year    | Lok Adalat | DRT   | SARFAESI Act 2002 |
|---------|------------|-------|-------------------|
| 2010-11 | 616018     | 12872 | 118642            |
| 2011-12 | 479073     | 13365 | 630429            |
| 2012-13 | 840691     | 13408 | 190537            |
| 2013-14 | 1636957    | 28258 | 194707            |
| 2014-15 | 2958313    | 22004 | 175355            |
| 2015-16 | 445634     | 24537 | 173582            |

Source:- [www.dbie.rbi.in](http://www.dbie.rbi.in)

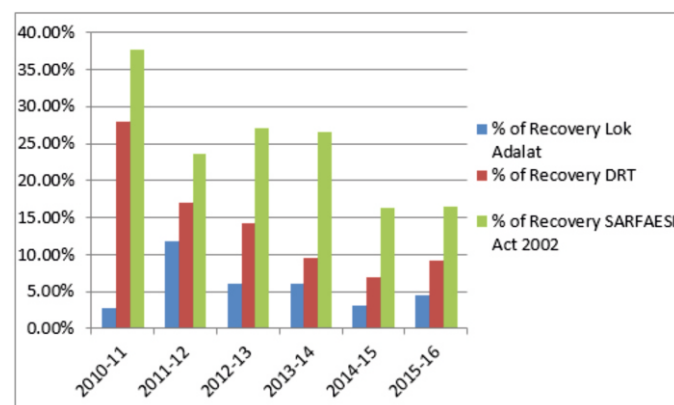


The information has been gathered with reference to investigate the instances of NPAs alluded to different channels for the repayment reason. It has been observed that number of instances of NPAs referred to different recovery channels has been enormously on rising pattern from 2010-11 to 2015-16. Be that as it may, there is a apex purpose of thought concerning administration of NPAs as these channels likewise not able to legitimate recovery of considerable advance cases. The number of cases referred towards Lok Adalat has been more than the cases referred to DRT and SARFAESI act 2002. This happens due to lack of awareness among public concern for the efficiency of this act. But this has been clarified from the table showing percentage of recovery of NPAs cases.

#### Amount Recovered through Various Channel

| Year    | % of Recovery Lok Adalat | % of Recovery DRT | % of Recovery SARFAESI Act 2002 |
|---------|--------------------------|-------------------|---------------------------------|
| 2010-11 | 2.87%                    | 27.89%            | 37.78%                          |
| 2011-12 | 11.80%                   | 17%               | 23.60%                          |
| 2012-13 | 6.10%                    | 14.19%            | 27.16%                          |
| 2013-14 | 6.03%                    | 9.58%             | 26.55%                          |
| 2014-15 | 3.2%                     | 6.95%             | 16.33%                          |
| 2015-16 | 4.44%                    | 9.24%             | 16.48%                          |

Source:- [www.dbie.rbi.in](http://www.dbie.rbi.in)



The above mentioned table and diagram describes about the level of NPAs recovery through different channels i.e. Lok Adalat, DRT and SARFAESI Act 2002 from 2010-11 to 2015-16. The percentage of recovery from SARFAESI act is quite more in the initial years as 37.78% in comparison to the other recovery channels. With the increase in the number of cases referred to the different recovery

channels their efficiency continued to be increasing year on year basis and percentage of recovery of NPAs going to be decreasing or increasing in different recovery channels.

#### Amendments to the SARFAESI Act

The SARFAESI Act permits secured lenders to take ownership over a guarantee, against which a credit had been given, upon a default in reimbursement. This procedure is attempted with the help of the District Magistrate, and does not require the intercession of courts or tribunals. The Bill gives that this procedure should be finished inside 30 days by the District Magistrate.

- In expansion, the Bill engages the District Magistrate to help banks in assuming control over the administration of an organization, on the off chance that the organization can't reimburse advances. This will be done on the off chance that the banks change over their extraordinary obligation into value offers, and therefore hold a stake of at least 51% in the organization.
- The Act makes a focal registry to keep up records of exchanges identified with secured resources. The Bill makes a focal database to incorporate records of property enlisted under different enrollment frameworks with this focal registry. This incorporates joining of enrollments made under Companies Act, 2013, Registration Act, 1908 and Motor Vehicles Act, 1988.
- The Bill gives that secured lenders won't have the capacity to take ownership over the guarantee unless it is enrolled with the focal registry. Encourage, these banks, after enlistment of security premium, will have need over others in reimbursement of duty.
- The Act engaged the Reserve Bank of India (RBI) to analyze the announcements and any data of Asset Reconstruction Companies identified with their business. The Bill additionally enables the RBI to complete review and examination of these organizations. The RBI may punish an organization if the organization neglects to follow any headings issued by it.
- The Bill gives that stamp obligation won't be charged on exchanges attempted for exchange of monetary resources for resource reproduction organizations. Budgetary resources incorporate advances and insurances.

#### CONCLUSION

Numerous far reaching changes have been made in the Indian Banking Sector since 1991. The Indian banks were confronting more than Rs. 90,000 crores NPAs issue and were running under loss of benefit. The common laws of the nation were excessively awkward, making it impossible to way to deal with recoup the awful credits. The banks were seen attempting to lessen their NPAs level to keep up the dependability and benefit. Obligation Recovery Tribunals (DRTs) were set up for recuperation of advances of banks and organizations. At first DRTs performed well, however their advance was endured when they get overburdened with the vast number of cases alluded to them. The kingfisher Airlines Mr. Vijay Malaya, Chennai based online instruction promoter Agnate Education Ltd., Mumbai based Shreem Corporation Ltd., soon is considerable rundown of 'obstinate defaulters' has been recognized by the investors like State Bank of India and others SBI has started activity against them by taking after the SARFAESI Act, 2002. It demonstrates that recuperations in NPAs are made less demanding by the alterations of SARFAESI Act 2002 and open the entryway for financiers to recoup their sums being recognized as NPAs.

The development of the SARFAESI Act has been a touchstone in the rundown of the changes in the Indian saving money division. The advance of this Act can be confirm by the way that amid 2002-03 the non-performing credits were 9.4% of gross advances which were lessened to 4.4% in 2014. The administration has received a few measures to handle disorder in Indian keeping money segment through nationalization of banks and alleviation measures however the legislature was required to take more compelling measures to diminish the level of developing NPAs in the managing an account area and the restoration of a solid budgetary saving money division in the nation.

#### REFERENCES

1. Gurumoorthy T.R and Sufha B. "Non-performing assets (A study with reference to Public sector Banks)" Indian journal of Applied Research Vol.2, No.2 November 2012, pp.7-
2. Chanchal (2013) – International of Research in Economics and Social Sciences
3. Samir and Karma (2013) in their paper "A comparative Analysis of Non-Performing Assets (NPAs) of selected Commercial banks in India.
4. Chandraappa Parkash (June 2014) A Cyclical structure on non-performing assets of scheduled commercial banks in India. IOSR Journal of Economics and Finance Vol.3 issue 4 ISSN : 2321-5925.
5. Rao, Mayur and Patel, Ankita (2015) A study on Non-performing assets management with reference to public sector banks, private sector banks and foreign banks in India. Journal of Management and Science, Vol. 5 No.1 Mar 2015, ISSN: 2249-1260.
6. Shaardha Chandra and Jain (2016), "The impact of SARFAESI Act 2002 in recovering the Non-Performance assets in Public Sector Banks: A study on Recovery in SBI, CBI, CB, BOB and PNB (2008 to 2014)" International Journal of Applied Engineering Research ISSN 0973-4562 Volume 11, Number 7 (2016) PP 5218-5224..

7. [http:// www. Ednindia.org/standing forum.htm](http://www.Ednindia.org/standing forum.htm)
8. <http://www.aaacapital services.com/index/.php=15>
9. <http://www.ripublication.com>
10. [www.dbie.rbi.org.in](http://www.dbie.rbi.org.in)
11. [www.gktoday.in](http://www.gktoday.in)